

## **REMARKS**

### **I. CASE STATUS**

Claims 52-55 and 118-137 remain pending in the application. In the interest of expediting prosecution of this case, Claims 52-54, 127, 134, 136, and 137 have been amended.

### **II. REQUEST FOR SUPERVISORY REVIEW AND CONSIDERATION AS “SPECIAL”**

As stated in MPEP 707.02: “The supervisory patent examiners are expected to personally check on the pendency of every application which is up for the third or subsequent Office Action with a view to finally concluding its prosecution.” The current application is on its 3rd Office Action, therefore MPEP 707.02 applies. Per MPEP 707.02, Applicants request that this application be treated “special” and be reviewed by a supervisory patent examiner with a view to finally concluding its prosecution.

### **III. EXAMINER INTERVIEW**

An Examiner Interview was conducted on July 21, 2011. Applicant’s representative discussed the currently pending claims with the Examiner as well as the general applicability of the cited references, but no agreement was reached. Applicant thanks the Examiner for the courtesies extended during the Interview. Examiner Mirza indicated that he would call Applicant’s representative before sending another Office Action. Applicant’s representative can be reached at 512-853-8844.

### **IV. REJECTIONS UNDER 35 U.S.C § 101**

Claims 118-126 and 137 stand rejected under 35 U.S.C § 101. Office Action, pp. 2 and 3. Particularly, the Office Action states that these claims are “drawn to a computer readable medium,” and that their “broadest reasonable interpretation” covers a “signal *per se*.” *Id.* Applicant respectfully notes, however, that these claims recite “[a]n article of manufacture including a computer readable medium....” Therefore, each of claims 118-126 and 137 falls

squarely within one or more of the statutory categories of patentable subject matter. 35 U.S.C. § 101 (“Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” (emphasis added)). Accordingly, Applicant respectfully requests that the § 101 rejection of claims 118-126 and 137 be withdrawn.

## V. REJECTIONS UNDER 35 U.S.C § 103

All pending claims stand rejected under 35 U.S.C. § 103(a) over *Hoffberg* (6,400,996) in view of *Pulier* (2002/0091840). Office Action, Jun. 8, 2011, p. 3-7. While Applicant has clarified some claims, Applicant respectfully traverses the rejections for at least the reasons below. In addition, Applicant reserves the right to submit any materials to antedate these references at a later time.

### A. Overview of Cited References

#### 1. *Hoffberg*

*Hoffberg* is directed to “[a]n adaptive interface for a programmable system, for predicting a desired user function, based on user history, as well as machine internal status and context.” *Hoffberg*, Abstract. As a result, *Hoffberg*’s system “seeks to minimize, for an individual user at any given time, the search and acquisition time for the entry of data through the interface.” *Id.* at col. 50, ll. 56-58.

The cited portions describe image parameters, such as “eyes, mouth, shape of ears, and other proportions and dimensions” that have “distinguishing power.” *Id.* at col. 65, ll. 63 to col. 66, l. 2. “[B]y employing a model based-object decomposition processing system, recognized elements [of an image] may be described using only a small amount of data and [a] greater proportion of data [is] used to describe unrecognizable elements.” *Id.* at col. 66, ll. 28-36.

## 2. Pulier

*Pulier* discloses “[a] client-side apparatus and method for handling media capable of being provided by a plurality of provided computer systems to a client computer.” *Pulier*, Abstract. According to *Pulier*, an “MPH [Multiple Provider Hosting] system includes a sniffer module 44, a statistics collector module 46, a metrics calculator module 48, and a stream switcher module 50.” *Id.*, ¶ [0012]. Notably, *Pulier*’s entire MPH system (*i.e.*, blocks 44, 46, 48, and 50) is contained within its client device (52). *Id.*, Fig. 1.

In operation, “[t]he MPH system establishes an account with several streaming media providers.... When an end user wants to access the media content, the MPH client-based system uses end user metrics and provider availability to select the best streaming media provider to deliver the media content to that particular end user at that particular time.... During media play, and in real-time, provider bandwidth is monitored, and if it falls below a specified percentage of the required bandwidth, the MPH system switches hosting to the next provider that meets the bandwidth criteria....” *Id.*, ¶ [0008] (emphasis added).

### B. Claim 52 (and accompanying dependent claims)

Claim 52 recites, in part:

- the server identifying a communication parameter associated with a communication path from the server to a first client;
- the server identifying a processing parameter of the first client;
- the server receiving a request to provide the image to the first client;  
for each of the one or more image elements;
- the server selecting a first set of the plurality of operations based at least in part on the processing parameter and the communication parameter;
- the server performing the first set of the plurality of operations to generate a first processed image element, wherein the performing uses the stored image element; and
- the server sending the processed image element to the first client, wherein the first client is configured to perform remaining ones of the plurality of operations using the first processed image element to display the image.

(emphasis added). The Office Action alleges that *Hoffberg* discloses every element of claim 52, except that:

Hoffberg did not disclose in detail the server sending the processed image element to the client, wherein the client is configured to perform remaining ones of the plurality of operation using the processed image element to display the image.

Office Action, Jun. 8, 2011, p. 4. Contrary to the Office Action's assertion, however, Applicant has been unable to find any passage of *Hoffberg* that would seem to teach or suggest, for example, "identifying a communication parameter associated with a communication path from the server to a first client" or "identifying a processing parameter of the first client."

The cited portions describe image parameters, such as "eyes, mouth, shape of ears, and other proportions and dimensions" that have "distinguishing power." *Id.* at col. 65, ll. 63 to col. 66, l. 2. "[B]y employing a model based-object decomposition processing system, recognized elements [of an image] may be described using only a small amount of data and greater proportion of data [is] used to describe unrecognizable elements." *Id.* at col. 66, ll. 28-36. Describing certain elements of an image differently than others based on distinguishing characteristics of the image elements has nothing to do with the above-noted features of claim 52.

Although *Hoffberg* mentions that "available bandwidth may be efficiently used" in its model based-object decomposition processing system, it does not factor in any processing or communication parameter associated with the client. Moreover, *Hoffberg* expressly teaches against using processing parameters of a client. In an uncited portion of *Hoffberg*, *Hoffberg* describes a portable interface that may present a data presentation:

The presentation definition, on the other hand, provides a set of parameters that propose or constrain the data presentation. The user system also provides a set of parameters that set preferences on presentation. Further, the data itself is analyzed for appropriate presentation parameters. These three sets of considerations are all inputs into a "negotiation" for an ultimate presentation scheme. Thus, the presentation is adaptive to server parameters, user parameters, and the data itself. For example, in a typical web-context, the color, size, typestyle, and layout of text may be

modified based on these considerations. Other factors that may be altered include frame size and layout, size of hotspots, requirement for single or double clicks for action, and the like.

*Hoffberg*, col. 51, ll. 50-63 (emphasis added). *Hoffberg* elaborates that “the presentation of data is responsive to the user, based on user preferences, as opposed to hardware limitations or compatibility issues.” *Id.* at col. 51, ll. 46-49 (emphasis added). Thus, *Hoffberg* makes clear that its data presentation for the portable interface is based on server parameters, user parameters that are not hardware limitations, and the data itself. As a result, *Hoffberg* expressly teaches that it would not include a *server identifying a processing parameter of the client*.

Applicant further asserts that *Hoffberg* does not teach or suggest, for example, “selecting a first set of the plurality of operations based at least in part on the processing parameter and the communication parameter,” or “performing the first set of the plurality of operations to generate a first processed image element.” *Hoffberg* describes a “model-based object extraction system” that uses “distinguishing parameters” of an image to process “common and variable elements” differently allowing for the bandwidth to “be efficiently used.” *Hoffberg*, col. 65, l. 63-col. 66, l. 17. Such processing “provides a highly asymmetric scheme, with a far greater processing complexity to initially process the image than to subsequently reconstruct or otherwise later employ the data.” *Id.* at col. 66, ll. 13-16. Thus, *Hoffberg*’s image processing, which is content specific, always uses greater processing complexity to “initially process the image” and has absolutely nothing to do with a “characteristic associated with the client.” Accordingly, *Hoffberg* fails to teach or suggest “selecting a first set of the plurality of operations based at least in part on the processing parameter and the communication parameter,” or “performing the first set of the plurality of operations to generate a first processed image element,” as in claim 52. Applicant has been unable to find any other passage of *Hoffberg* that would seem to teach or suggest these elements.

In sum, Applicant asserts that *Hoffberg* does not teach or suggest any of the aforementioned elements of claim 52. Applicant acknowledges the Examiner’s Notes on pages 7 and 8 of the Office Action, but absent a more specific showing of how *Hoffberg* is alleged to teach or suggest the elements of claim 52, Applicant respectfully asserts that it does not.

Likewise, *Pulier* fails to rectify the deficiencies of *Hoffberg*. Specifically, *Pulier*'s "MPH system [that] switches hosting to the next provider that meets the bandwidth criteria" when provider bandwidth "falls below a specified percentage of the required bandwidth" has nothing to do with the above features. *Pulier*, ¶ [0008].

Accordingly, a combination of *Hoffberg* with *Pulier*, even if proper, does not teach or suggest the elements of claim 52. Claims 53-55 depend from claim 52 and thus are patentably distinct from the proposed combination of *Hoffberg* with *Pulier* for at least the same reasons.

**C. No Prima-Facie Rejection for the Remaining Independent Claims**

The rejections of independent claims 118, 127, 134, and 137 were lumped together with the rejection of claim 52. Not only are those other independent claims of a different claim type than the method of claim 52, but they include different features than those of claim 52, which have not been addressed in any Office Action to date. Accordingly, Applicant requests that the next office action, if the claims are not allowable in their current state, be non-final.

**1. Claim 118 (and accompanying dependent claims)**

Many features of claim 118 are different than those of claim 52, yet have never been addressed in any of the previous Office Actions. For example, claim 118 recites, in part:

determining a first portion of the plurality of tasks to be performed by the computer system, wherein said determining is based at least in part upon at least one characteristic associated with the client;  
performing the first portion of the plurality of tasks on at least a portion of the plurality of image elements to produce a partially processed version of the image; and  
transmitting the partially processed version of the image to the client....

The Office Action does not address these elements, and Applicant respectfully asserts that the proposed combination of *Hoffberg* with *Pulier* does not teach or suggest "determining a first portion of the plurality of tasks to be performed by the computer system, wherein said determining is based at least in part upon at least one characteristic associated with the client; performing the first portion of the plurality of tasks on at least a portion of the plurality of image

elements to produce a partially processed version of the image; and transmitting the partially processed version of the image to the client....” For example, *Hoffberg* describes that by using “distinguishing parameters” of an image, “common and variable elements” may be processed differently allowing for the bandwidth to “be efficiently used.” *Hoffberg*, col. 65, l. 63-col. 66, l. 17. Moreover, *Hoffberg*’s processing “provides a highly asymmetric scheme, with a far greater processing complexity to initially process the image than to subsequently reconstruct or otherwise later employ the data.” *Id.* at col. 66, ll. 13-16. Thus, *Hoffberg*’s image content specific processing is more complex to “initially process the image” and has nothing to do with a “characteristic associated with the client.”

Pulier fails to rectify the deficiencies of *Hoffberg* regarding claim 118. While *Pulier* discloses a client receiving “streaming media,” there does not appear to be anything in *Pulier* to indicate that such “streaming media” includes a “partially processed version of an image” produced by “performing the first portion of the plurality of tasks” as recited in claim 118. *Pulier*, ¶ [0008]. At least for these additional reasons, Applicant respectfully requests that the 35 U.S.C. § 103(a) rejection of claims 118-126 be withdrawn.

## **2. Claim 127 (and accompanying dependent claims)**

As was the case with claim 118, many features of claim 127 are different than those of claim 52, yet have never been addressed in any of the previous Office Actions. For example, claim 127 recites, in part:

selecting between [a] processed version of the image and [an] unprocessed version of the image, wherein said selecting is based at least in part upon at least one characteristic associated with the client; and transmitting the selected version of the image to the client....

(emphasis added). The Office Action does not address these elements, and Applicant respectfully asserts that the proposed combination of *Hoffberg* with *Pulier* does not teach or suggest “selecting between [a] processed version of the image and [an] unprocessed version of the image...; and transmitting the selected version of the image to the client....” *Hoffberg* is void of any teachings regarding selecting between [a] processed version of the image and [an] unprocessed version of the image, wherein said selecting is based at least in part upon at least

one characteristic associated with the client. Instead, as described above, *Hoffberg* teaches it “model-based object extraction system” in which “distinguishing parameters” of an image dictate an object-element’s storage efficiency. *Hoffberg*, col. 65, l. 56-col. 66, l. 16. Moreover, while *Pulier* discloses a server transmitting “streaming media,” there does not appear to be anything in *Pulier* to indicate that its server “select[s] between [a] processed version of the image and [an] unprocessed version of the image,” as recited in claim 127. *Pulier*, ¶ [0008]. At least for these additional reasons, Applicant respectfully requests that the 35 U.S.C. § 103(a) rejection of claims 127-133 be withdrawn.

### **3. Claims 134 and 137 (and accompanying dependent claims)**

As was the case with claims 118 and 127, many features of claims 134 and 137 are different than those of claim 52, yet have never been addressed in any of the previous Office Actions. For example, claims 134 and 137 recite, in part:

sending to the server at least one processing characteristic associated with the client device, wherein the processing characteristic is indicative of image processing capabilities of the client device;  
receiving from the server a plurality of image elements processed to an extent determined at least in part by the at least one characteristic associated with the client device, wherein one of the plurality of image elements is processed to a different extent than at least one other of the plurality of image elements

(emphasis added). The Office Action does not address these features, and Applicant respectfully asserts that the proposed combination of *Hoffberg* with *Pulier* does not teach or suggest “sending to the server at least one processing characteristic associated with the client device, wherein the processing characteristic is indicative of image processing capabilities of the client device; receiving from the server a plurality of image elements processed to an extent determined at least in part by the at least one characteristic associated with the client device, wherein one of the plurality of image elements is processed to a different extent than at least one other of the plurality of image elements...” As discussed above, *Hoffberg*’s image processing is content specific and does not include “receiving from the server a plurality of image elements processed to an extent determined at least in part by [ ] at least one characteristic associated with [a] client device. Further, while *Pulier* discloses a client receiving “streaming media,” there does not



appear to be anything in *Pulier* to indicate that such “streaming media” includes “image elements processed to an extent determined at least in part by [ ] at least one characteristic associated with [a] client device,” as recited in claims 134 and 137. At least for this additional reason, Applicant respectfully requests that the 35 U.S.C. § 103(a) rejection of claims 134-137 be withdrawn.

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In the interest of expediting prosecution of this case, Applicant respectfully requests another telephone interview prior to the Examiner sending another office action if any issues remain preventing allowance.

## CONCLUSION

Applicant respectfully submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above-referenced application from becoming abandoned, Applicant hereby petitions for such extension.

The Commissioner is authorized to charge any fees that may be required, or credit any overpayment, to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account No. 501505/6257-31902/EKW.

Respectfully submitted,

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